



To: Mr. Johnny McElligott, Kilcolgan Residents Association
CC: Mr. Gerry O'Sullivan, Fehily Timoney & Company
Subj: Allegation of possible conflict of interest & contravention of Ethics Framework by the contractor Fehily Timoney & Company
Date: Dec 22nd, 2008

A chara,

I am writing to you in my capacity as Ethics Registrar for Kerry Local Authorities. On the 29th of August and again on the 3rd of September 2008, I received complaints about a possible conflict of interest in the award of a contract to Fehily Timoney & Company (FTC) to undertake a Strategic Environmental Assessment of the draft County Development Plan 2009-2015. The complaint originated from a Mr. Johnny McElligott, on behalf of the Kilcolgan Residents Association.

Complaint:

The nature of the complaint is summarised in the extract from the complaint below:

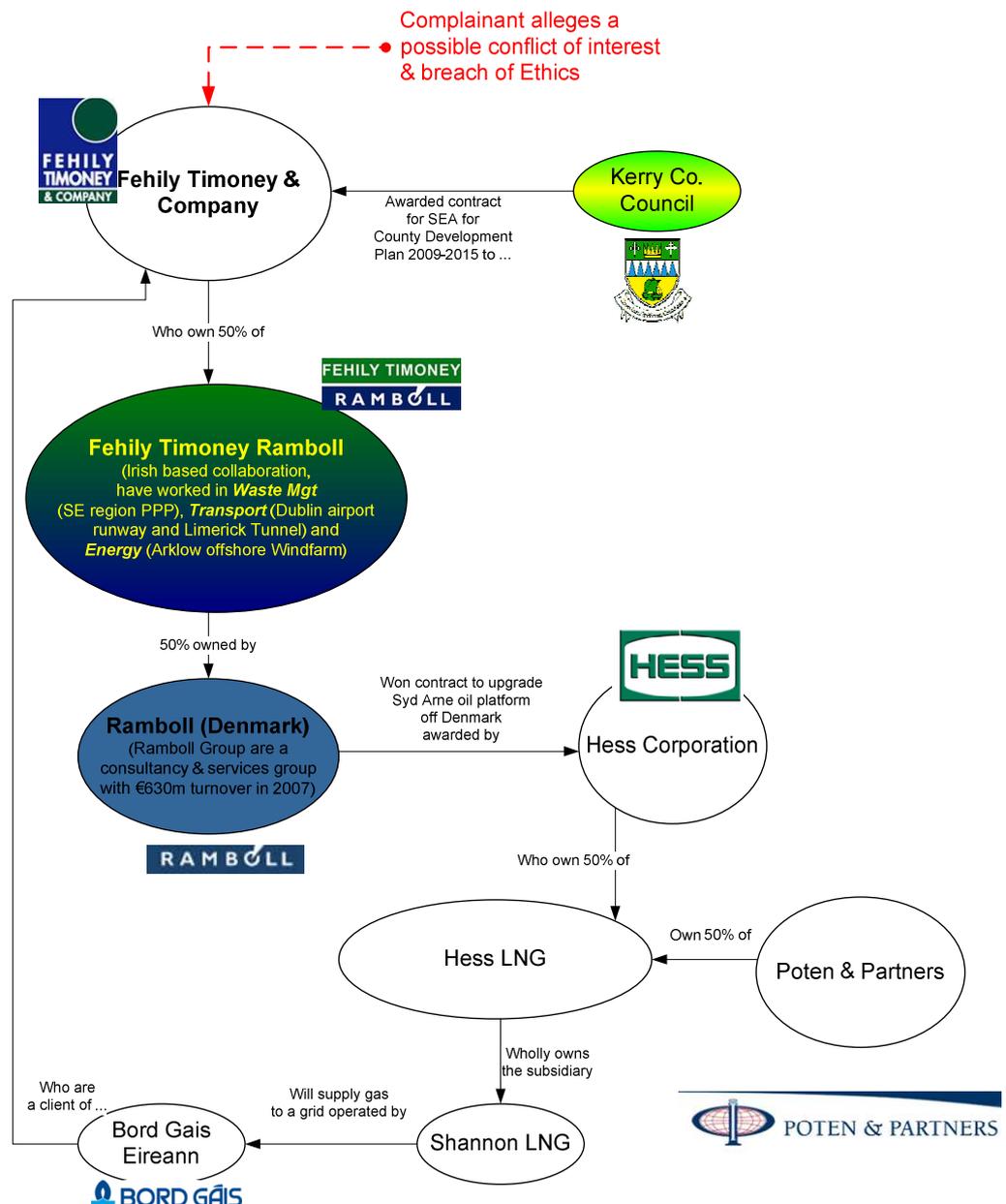
The KRA is expressing reservations about the draft Kerry County Development Plan 2009-2015 on the discovery that the Strategic Environmental Assessment (SEA) of the draft plan is being undertaken by Cork-based Fehily Timoney and Company. The KRA is concerned about possible conflicts of interest due to the company's links with the transportation, construction and energy sectors.

The complainant makes two specific links between the contractor and the energy sector, and in particular, firms with a relationship to the proposed Shannon LNG terminal near Tarbert. These relationships are with the Hess Corporation who are half owners of the Shannon LNG terminal (via a Danish company called Ramboll) and Bord Gáis Éireann.

These relationships are summarised in the diagram opposite.

The complainant states that:

In our opinion it is not possible for Fehily Timoney and Co to be able to give any objective or independent assessment of the strategic environmental impacts when An Bord Gais is one of its clients.





Analysis

Process:

Where I become aware of a possible contravention by a contractor of Part 15 of the Local Government Act 2001 and the Code of Conduct for Employees¹, I must bring the matter to the Manager's attention, as prescribed by Section 174.7(a) of this Act.

I advised the complaint in writing on Sept 3rd that prior to a formal forwarding of any such complaint, that I needed to establish that the complaint wasn't spurious or vexatious and any allegation required material substantiation.

I subsequently conducted a number of enquiries and research:

- Research into the relationships between FTC and Ramboll / Hess / Shannon LNG and between FTC and Bord Gáis (as reflected in the previous diagram)
- Review of the Conflict of Interests provisions in KCC's Request For Tender & FTC's Tender
- Communication with FTC directly to ascertain the nature of relationships and timing of work
- Review of other RFT responses to benchmark the type of firms responding to SEA tenders.
- Review with Planning staff on the development and use of an SEA in the County Development Planning process

SEA:

The complaint appears to have not fully understood the process of the SEA of the draft County Development Plan, as reflected by the second sentence in his paragraph below.

The SEA is a systematic process for predicting, evaluating and mitigating, at the earliest appropriate stage, the environmental effects of a plan before it is finalised. It is effectively a seal of approval required by the council before the plan can be officially adopted

The SEA process in County Development Planning is described in significant detail in published KCC documentation². Quoting that text we see how environmental aims are first established and then applied to the principles and objectives of the draft CDP to identify positive, neutral and negative impacts:

The major elements in the SEA process are as follows:

1. A series of environmental and sustainable development aims are established;
2. The strategic development principles and objectives contained within the Draft County Development Plan are assessed in terms of their impacts on these aims;
3. The Draft Development Plan may be amended to minimise the negative impacts identified;
4. The Development Plan is finalised, agreed and adopted;
5. Environmental Indicators are identified to facilitate monitoring of the impacts associated with the implementation of the adopted Plan.

The first two elements of the process will be dealt with at this stage. The remaining elements will be developed as the public consultation process proceeds.

Both the SEA and the draft CDP are put through public consultation. The complaint appears to not fully realise that an objective-by-objective political process is in place when Council assesses the SEA of the draft plan as reflected in the CDP document as quoted below, and it is not a "seal of approval":

13.2.2. The carrying out of a Strategic Environmental Assessment ensures that all likely impacts associated with implementation of the policies contained within the draft plan are identified at an early stage. In some instances, amendments can be considered in order to minimise potentially negative impacts and / or "trade-offs" can be identified where conflicts between economic, social and environmental objectives arise. The final choice of alternatives to pursue is, however, a political process which balances out the economic, social and environmental effects of the plan.

¹ And which applies to contractors undertaking work of this nature

² www.kerrycoco.ie/planning/devplan/13-Strategic-Env-Assess%20Centre.pdf



Refutation of alleged conflict of interest by FTC:

Mr. Gerry O'Sullivan of FTC strongly refutes any allegations that a conflict of interest exists. In doing so, he makes the following points:

- Fehily Timoney & Company and Ramboll's partnership company, FTR, is project specific and FTR had no role in the SEA.
- FTC and Ramboll do not have any involvement in, or access to information about, projects which are carried out by the other party.
- FTC's projects with Bord Gáis were based in Co. Cork and Co. Waterford.
- No contact or petition was made to FTC (or its employees) by either Ramboll or Bord Gáis on the subject of the SEA or specifically concerning the Shannon LNG.
- FTC are a member of the Association of Consulting Engineers of Ireland and abide by its strict code of ethics³.

Nature of companies engaged in Strategic Environmental Assessments

It would be reasonable to expect that many of the companies equipped with the skills to undertake an SEA report would be multi-disciplinary technical consulting firms, with a mix of public and private sector clients. This expectation is borne out by an assessment of the companies who responded to the KCC RFT:

1. Brady Shipman Martin
2. RPS
3. Royal Haskening
4. White Young Green
5. Tom Phillips & Assoc
6. Hyder
7. Fehily Timoney & Co.
8. CAAS
9. Ove Arup

Of the 9 respondents, 8 have a mix of public and private sector clients. It would be irrational, and almost certainly illegal under procurement legislation, to disqualify a company from a public sector contract on the basis that they undertake private sector work.

Conclusion:

On the basis of the information supplied by the complaint and further research I have undertaken, I cannot find any *prima facie* case to suggest a possible conflict of interest exists or contravention of the Ethics framework occurred.

I therefore advise all parties that the complaint is hereby closed and I will not be referring the matter to the County Manager under the Ethics Framework.

It is my expectation that you will find this report fair and support my findings.

Nollaig shona daoibh,

Is mise le meas,

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³ <http://www.acei.ie/PDF/Rules%20of%20Association2008.doc>